



ANALYSIS

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 1994, No. 131

An Act to amend the Dumping and Countervailing Duties Act 1988
[9 December 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Dumping and Countervailing Duties Amendment Act 1994, and shall be read together with and deemed part of the Dumping and Countervailing Duties Act 1988 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more orders may be made bringing different provisions into force on different dates.

2. Interpretation—The principal Act is hereby amended by repealing section 3 (as amended by section 2 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“3. (1) In this Act, unless the context otherwise requires,—

- “ ‘Collector’ has the meaning given to it in section 2 (1) of the Customs Act 1966:
- “ ‘Dumping’, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and ‘dumped’ has a corresponding meaning:
- “ ‘Exporter’ has the meaning given to it in section 2 (1) of the Customs Act 1966:
- “ ‘Goods’ means all kinds of movable personal property, including animals:
- “ ‘Foreign country’ means any country other than New Zealand:
- “ ‘Foreign government’ means—
- “(a) The Government of a foreign country:
- “(b) A provincial, State, municipal, local, or regional Government or authority of a foreign country:
- “(c) A body that exercises authority for an association of foreign countries:
- “(d) A person, agency, or institution acting for, or on behalf of, a Government or body referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition:
- “ ‘Importer’ has the meaning given to it in section 2 (1) of the Customs Act 1966:
- “ ‘Like goods’, in relation to any goods, means—
- “(a) Other goods that are like those goods in all respects; or
- “(b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:
- “ ‘Minister’ means the Minister of Commerce:
- “ ‘Secretary’ means the Secretary of Commerce:
- “ ‘Shipment’ has the meaning given to it in section 2 (1) of the Tariff Act 1988:
- “ ‘Specific subsidy’ means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign government:
- “ ‘Subsidised goods’ means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or

import of which a specific subsidy has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, by a foreign government:

“‘Subsidy’ includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback:

“‘Tariff’ has the meaning given to it in section 2 of the Tariff Act 1988:

“‘WTO Agreement’ means the Agreement establishing the World Trade Organization adopted at Marrakesh on the 15th day of April 1994.

“(2) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arm’s length transaction if—

“(a) There is any consideration payable for or in respect of the goods other than their price; or

“(b) The price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person; or

“(c) In the opinion of the Secretary, the buyer, or a person related to the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

“(3) Where goods are imported into New Zealand and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the Secretary is satisfied, after having regard to—

“(a) The amount of the price paid or to be paid for the goods by the importer; and

“(b) Such other amounts as the Secretary determines to be costs necessarily incurred in the importation and sale of the goods; and

“(c) The likelihood that the amounts referred to in paragraph (a) and paragraph (b) of this subsection will be able to be recovered within a reasonable time; and

“(d) Such other matters as the Secretary considers relevant,—

that the importer, whether directly or through a related person, sells those goods in New Zealand (whether in the condition in which they were imported or otherwise) at a loss, the Secretary may treat the sale of those goods as indicating that the importer or a related person will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of subsection (2) (c) of this section.

“(4) For the purposes of this Act, a person shall be deemed to be related to another person if—

“(a) One of them directly or indirectly controls the other (within the meaning of subsection (5) of this section); or

“(b) Both of them are directly or indirectly controlled by a third person (within that meaning); or

“(c) Together they directly or indirectly control a third person (within that meaning).

“(5) For the purposes of subsection (4) of this section, a person controls another person if the first-mentioned person is in a position, whether legally or operationally, to exercise restraint or direction over the other person.

“(6) For the purposes of this Act, where, during the exportation of goods to New Zealand, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.”

3. Meaning of “industry”—The principal Act is hereby amended by repealing section 3A (as inserted by section 3 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“3A. For the purposes of this Act, the term ‘industry’, in relation to any goods, means—

“(a) The New Zealand producers of like goods; or

“(b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.”

4. Export price—(1) Section 4 (1) (a) of the principal Act is hereby amended by omitting the word “arms”, and substituting the word “arm’s”.

(2) Section 4 (1) of the principal Act is hereby further amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) Where the purchase of the goods by the importer was not an arm’s length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:

“(i) The amount of any duties and taxes imposed under any Act; and

“(ii) The amount of any costs, charges, or expenses arising in relation to the goods after exportation; and

“(iii) The amount of the profit, if any, on the sale by the importer or, where the Secretary so directs, an amount calculated in accordance with such rate as the Secretary determines as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realised on sales of goods of the same category by the importer where such sales exist; or

“(c) Where the purchase of the goods by the importer was not an arm’s length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the Secretary in the circumstances of the case.”

(3) Section 4 (2) of the principal Act is hereby amended—

(a) By omitting from paragraph (b) the words “associated with”, and substituting the words “related to”; and

(b) By omitting the word “Minister”, and substituting the word “Secretary”.

5. Normal value—The principal Act is hereby amended by repealing section 5, and substituting the following section:

“5. (1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home

consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

“(2) Where the Secretary is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this section because—

“(a) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or

“(b) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or

“(c) Like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1) of this section,—

the Secretary may determine that the normal value, for the purposes of this Act, shall be either—

“(d) The sum of—

“(i) Such amount as is determined by the Secretary to be the cost of production or manufacture of the goods in the country of export; and

“(ii) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export,—

“(A) Such amounts as the Secretary determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and

“(B) An amount calculated in accordance with such rate as the Secretary determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where

such sales exist) of the same general category in the domestic market of the country of export of the goods; or

“(e) The price that is representative of the price paid for similar quantities of like goods sold at arm’s length in the ordinary course of trade in the country of export for export to a third country.

“(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the Secretary—

“(a) At the same level of trade; and

“(b) In respect of sales made at as nearly as possible the same time; and

“(c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

“(4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2) of this section, the Secretary shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

“(5) Where—

“(a) The actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and

“(b) The Secretary is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—

the Secretary may direct that the normal value of the goods shall be so ascertained.

“(6) Where the Secretary is satisfied, in relation to goods imported or intended to be imported into New Zealand, that—

“(a) The price paid for like goods—

“(i) Sold for home consumption in the country of export in sales that are arm’s length transactions; or

“(ii) Sold in the country of export to a third country in sales that are arm’s length transactions,—

is, and has been for an extended period of time and

in respect of a substantial quantity of like goods, less than the sum of—

“(iii) Such amount as the Secretary determines to be the cost of production or manufacture of the like goods in the country of export; and

“(iv) Such amounts as the Secretary determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and

“(b) It is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) of this subsection within a reasonable period of time,—
the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.”

6. Export price and normal value—Section 6 of the principal Act is hereby amended by omitting the word “Minister” in each place where it occurs, and substituting in each case the word “Secretary”.

7. Amount of subsidy—The principal Act is hereby amended by repealing section 7, and substituting the following section:

“7. (1) In this Act, the expression ‘amount of the subsidy’, in relation to any subsidised goods, means the amount determined by the Secretary as being the benefit conferred on the recipient of the subsidy.

“(2) For the purposes of subsection (1) of this section,—

“(a) The provision of equity capital by a foreign government shall not be regarded as conferring a benefit, unless the investment decision in relation to the provision of that equity capital can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the exporting country:

“(b) The provision of a loan by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient could obtain on the market, in which case,

the benefit to the recipient shall be deemed to be the difference between those amounts:

“(c) The provision of a loan guarantee by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case, the benefit to the recipient shall be deemed to be the difference between those amounts:

“(d) The provision of goods or services, or the purchase of goods, by a foreign government shall not be regarded as conferring a benefit, unless the goods or services are provided for less than adequate remuneration within the meaning of subsection (4) of this section, or the goods are purchased for more than adequate remuneration, as the case may be.

“(3) For the purposes of subsection (1) of this section, the following amounts shall not be included in the amount of the subsidy:

“(a) Any application fee or other fees or costs necessarily incurred in order to qualify for, or to receive the benefit of, the subsidy:

“(b) Any export taxes, duties, or other charges levied on the export of the goods to New Zealand that are specifically intended to offset the subsidy.

“(4) For the purposes of subsection (2) (d) of this section, adequate remuneration shall be determined in relation to prevailing market conditions in the country concerned for the goods or services, taking into account price, quality, availability, marketability, transportation, and other conditions of the provision or purchase.

“(5) Where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Act, the amount of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.”

8. Material injury—The principal Act is hereby amended by repealing section 8, and substituting the following section:

“8. (1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being

caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the Secretary shall examine—

“(a) The volume of imports of the dumped or subsidised goods; and

“(b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and

“(c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

“(2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the Secretary may consider, the Secretary shall have regard to the following matters:

“(a) The extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand:

“(b) The extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers:

“(c) The extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:

“(d) The economic impact of the dumped or subsidised goods on the industry, including—

“(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

“(ii) Factors affecting domestic prices; and

“(iii) The magnitude of the margin of dumping; and

“(iv) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments:

“(e) Factors other than the dumped or subsidised goods that have injured, or are injuring, the industry, including—

“(i) The volume and prices of goods that are not sold at dumped prices or that are not subsidised; and

“(ii) Contraction in demand or changes in the patterns of consumption; and

“(iii) Restrictive trade practices of, and competition between, overseas and New Zealand producers; and

“(iv) Developments in technology; and

“(v) The export performance and productivity of the New Zealand producers:

“(f) The nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.

“(3) For the purposes of this section, the Secretary may disregard any information that the Secretary considers to be unreliable.”

9. Notice—Section 9 (b) of the principal Act is hereby amended—

(a) By omitting from subparagraph (iii) the term “complainant”, and substituting the term “applicant”; and

(b) By inserting in subparagraph (iv), after the word “Minister” in both places where it occurs, the words “or the Secretary”.

10. Initiation and subsequent investigation—The principal Act is hereby amended by repealing section 10 (as amended by section 7 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“10. (1) Subject to this section, on receipt of a properly documented application made by or on behalf of New Zealand producers of like goods and on being satisfied that sufficient evidence has been provided that—

“(a) Goods imported or intended to be imported into New Zealand are being dumped or subsidised; and

“(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the

establishment of an industry has been or is being materially retarded,—

the Secretary may initiate an investigation to determine both the existence and the effect of any alleged dumping or subsidisation of any goods.

“(2) For the purposes of this section, a properly documented application must include:

“(a) Evidence of—

“(i) Dumping or subsidisation, as the case may be; and

“(ii) Injury to the industry; and

“(iii) A causal link between the alleged dumping or subsidisation and the alleged injury; and

“(b) Such information as is reasonably available to the applicant in relation to the following:

“(i) The names of the New Zealand producers making the application:

“(ii) The names of all other known New Zealand producers of like goods:

“(iii) A description of the volume and value of the domestic production of like goods, both by the producers referred to in subparagraph (i) of this paragraph and by the producers referred to in subparagraph (ii) of this paragraph:

“(iv) A complete description of the allegedly dumped or subsidised goods:

“(v) The names of the countries of origin or export of the allegedly dumped or subsidised goods:

“(vi) The name of each known exporter or overseas producer of allegedly dumped or subsidised goods:

“(vii) The names of persons known to be importing the allegedly dumped or subsidised goods:

“(viii) In the case of subsidised goods, the existence, amount, and nature of the subsidy:

“(ix) Normal values of the allegedly dumped goods when destined for consumption in the domestic markets of the countries of origin or export (or, where appropriate, either the prices at which the goods are sold from the countries of origin for export to third countries, or the prices based on a constructed value):

“(x) The export prices of the allegedly dumped or subsidised goods (or, where appropriate, the prices

at which the goods are first resold in arm's length transactions in New Zealand):

“(xi) The import volumes into New Zealand of the allegedly dumped or subsidised goods:

“(xii) The effects that the imports of the allegedly dumped or subsidised goods have had, or will have, on prices of like goods in New Zealand:

“(xiii) The consequent impact of those imports on the industry:

“(xiv) Relevant factors affecting the industry that may have a bearing on the information required under subparagraphs (xii) and (xiii) of this paragraph.

“(3) An investigation shall not be initiated under this section unless the Secretary is satisfied that the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes—

“(a) Twenty-five percent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than 6 months); and

“(b) More than 50 percent of the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

“(4) Where the Secretary initiates an investigation, pursuant to subsection (1) of this section, in respect of the existence and effect of any alleged dumping or subsidisation of goods, notice of the initiation of the investigation shall be given.

“(5) Upon the initiation of an investigation by the Secretary pursuant to subsection (1) of this section and thereafter during the course of the investigation, evidence of the dumping or subsidisation and of the material injury to an industry shall be considered simultaneously.

“(6) The Secretary, after initiating an investigation pursuant to subsection (1) of this section, shall ensure that all interested parties to the investigation are given reasonable opportunity—

“(a) To present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally:

“(b) Unless the information may be withheld under the Official Information Act 1982, to have access to all

non-confidential information relevant to the presentation of their case and that is used by the Secretary in the investigation, and to prepare representations on the basis of that information:

“(c) On request being made, to meet those parties with adverse interests in order to present opposing views.

“(7) Where a party has submitted information to the Secretary, and has shown good cause for the Secretary to believe—

“(a) That the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would otherwise have a significant adverse effect upon,—

“(i) The party who submitted the information; or

“(ii) The party from whom the information was acquired by the party who submitted the information; or

“(iii) Any party to whom the information relates;
or

“(b) That the information otherwise should be treated as confidential,—

the Secretary shall not disclose the information without the express permission of any such party that would be adversely affected by its release.

“(8) The Secretary may request parties who have provided confidential information to furnish—

“(a) A non-confidential summary of the information; or

“(b) If it is claimed that the information is not susceptible of such summary, a statement of the reasons why such summary is not possible,—

and the Secretary may disregard any information for which the party submitting it fails to provide either a satisfactory summary or satisfactory reason why such summary cannot be provided.

“(9) Before initiating an investigation under subsection (1) of this section, the Secretary shall—

“(a) Notify the Government or Governments of the country or countries of export of the goods that are the subject of the proposed investigation; and

“(b) In the case of an application for the investigation into the subsidisation of any goods, give that Government or those Governments a reasonable opportunity for consultations with the aim of

clarifying the situation and arriving at a mutually agreed solution.

“(10) Nothing in this section shall authorise the Secretary to initiate an investigation in relation to any alleged dumping of goods of Australian origin.”

11. Notice to parties to investigation—The principal Act is hereby amended by inserting, after section 10, the following section:

“10A. (1) Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the Secretary shall give to the parties to the investigation referred to in section 9 (b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

“(2) Nothing in subsection (1) of this section limits the Official Information Act 1982 or section 10 (7) of this Act.”

12. Termination of investigations—The principal Act is hereby amended by repealing section 11 (as amended by section 8 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“11. (1) Where the Minister, at any time before making a final determination under section 13 of this Act, is satisfied in respect of some or all of the goods under investigation, that—

“(a) There is insufficient evidence of dumping or subsidisation to justify proceeding with the investigation; or

“(b) There is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened or the establishment of a New Zealand industry has been or is being materially retarded by means of the dumping or subsidisation of the goods; or

“(c) In the case of subsidisation, the imposition of a countervailing duty in respect of those goods would be inconsistent with New Zealand’s obligations as a party to the WTO Agreement; or

“(d) The application for the investigation has been withdrawn in writing by those New Zealand producers by or on whose behalf the application was made; or

“(e) New Zealand producers who previously expressed support for the application for the investigation have

withdrawn that support in writing to such an extent that, by reason of section 10 (3) of this Act, the investigation could not have been initiated,—

the Minister shall—

“(f) Terminate the investigation with respect to those goods; and

“(g) Give notice of such termination.

“(2) For the purposes of subsection (1) (a) of this section, evidence of dumping or subsidisation shall be insufficient where,—

“(a) In the case of dumping, the margin of dumping is less than 2 percent (expressed as a percentage of the export price); or

“(b) In the case of subsidisation, the amount of the subsidy is less than one percent of the value of the goods at the time of import; or

“(c) In the case of either dumping or subsidisation, the volume of imports of dumped or subsidised goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand’s obligations as a party to the WTO Agreement.

“(3) Where—

“(a) Any investigation is terminated under subsection (1) of this section, and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such nature as materially to affect the decision to terminate the investigation; or

“(b) Any investigation is terminated pursuant to an undertaking given by the Government of the country of export or by an exporter, as the case may be, under section 15 (1) of this Act and that Government or that exporter violates that undertaking,—

the Secretary may initiate a further investigation and all the provisions of this Act shall have effect accordingly.

“(4) Notice shall be given of the initiation of every further investigation under subsection (3) of this section.”

13. Repeal of section 12 relating to preliminary determinations—Section 12 of the principal Act (as amended by section 9 of the Dumping and Countervailing Duties Amendment Act 1990) is hereby repealed.

14. Final determination—The principal Act is hereby amended by repealing section 13, and substituting the following section:

“13. (1) Subject to section 11 of this Act, within 180 days after the initiation of an investigation under section 10 of this Act (but not less than 30 days after the provision of information in accordance with section 10A of this Act), the Minister shall make a final determination as to whether or not, in relation to the importation or intended importation of goods into New Zealand,—

“(a) The goods are being dumped or subsidised; and

“(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

“(2) Notice of the final determination of the Minister shall be given as soon as practicable after it is made.”

15. Anti-dumping and countervailing duties—The principal Act is hereby amended by repealing section 14 (as amended by section 10 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“14. (1) At any time after the Minister makes a final determination under section 13 (1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this section (which notice may be given simultaneously with, or at any time after, the notice given under section 13 (2) of this Act) and there shall, with effect on and from the applicable date referred to in section 17 of this Act, be imposed,—

“(a) In respect of those goods that are dumped, a duty to be known as anti-dumping duty:

“(b) In respect of those goods that are subsidised, a duty to be known as countervailing duty.

“(2) Anti-dumping duty or countervailing duty, as the case may be, imposed under subsection (1) of this section, shall be collected and paid on the demand of the Collector on and from the day after the date on which the notice under subsection (1) of this section is published in the *Gazette*.

“(3) Notwithstanding subsection (1) (b) of this section, no countervailing duty may be imposed under this section if to do so would be inconsistent with New Zealand’s obligations as a party to the WTO Agreement.

“(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister,—

“(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

“(b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

“(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

“(6) The Secretary may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount,—

“(a) On the initiative of the Secretary; or

“(b) Where a request for a reassessment is submitted to the Secretary by an interested party who submits evidence justifying the need for a reassessment; or

“(c) Following the completion of a review carried out under subsection (8) of this section—

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

“(7) The Minister may, by notice, terminate, in whole or in part, the imposition of any anti-dumping or countervailing duty imposed under this section, with effect from the date specified in the notice, which date may be prior to the date of the notice.

“(8) The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

“(9) Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods from the date that is 5 years after—

“(a) The date of the final determination made under section 13 of this Act in relation to those goods; or

“(b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section,—

whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.

“(10) Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this section results in a lower duty being imposed on any goods, the Minister may require the Collector to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.”

16. Price undertakings—(1) Section 15 (1) of the principal Act is hereby amended by omitting the word “Where,” and substituting the words “Subject to subsection (1A) of this section, where,”.

(2) Section 15 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Before accepting any undertaking given under subsection (1) of this section, the Minister must have reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that—

“(a) The goods are being dumped or subsidised; and

“(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.”

(3) Section 15 of the principal Act is hereby further amended by repealing subsections (7) and (8), and substituting the following subsections:

“(7) The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of any undertaking given and accepted under this section and shall complete that review within 180 days of its initiation.

“(8) Any undertaking given and accepted under this section shall automatically lapse from the date that is the later of 5 years after—

“(a) The date of the acceptance of the undertaking; or

“(b) Where a review carried out under subsection (7) of this section has been completed and the undertaking continued in the same or a modified form, the date of the initiation of that review—
unless, at that date, the undertaking is subject to review under subsection (7) of this section.”

17. Provisional measures—The principal Act is hereby amended by repealing section 16 (as amended by section 12 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“16. (1) If, at any time after 60 days from the date on which an investigation has been initiated by the Secretary under section 10 of this Act (not being an investigation that has been terminated under section 11 of this Act),—

“(a) The Minister has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that—

“(i) The goods are being dumped or subsidised; and

“(ii) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and

“(b) The Minister is satisfied that action under this section is necessary to prevent material injury being caused during the period of investigation,—

the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with Part IX of the Customs Act 1966, except that the rate or amount of duty to be secured shall not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.

“(2) Notwithstanding subsection (1) of this section, at any time after the Secretary has initiated an investigation under section 11 (3) (b) of this Act, the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods the subject of the investigation shall be secured in accordance with Part IX of the Customs Act 1966.

“(3) A provisional direction given under subsection (1) or subsection (2) of this section shall in all cases cease to have effect following the final determination made by the Minister pursuant to section 13 of this Act.

“(4) When a provisional direction given under subsection (1) or subsection (2) of this section ceases to have effect, any security given pursuant to the provisional direction shall be released, except to the extent that duties are payable on goods imported prior to the direction ceasing to have effect.

“(5) Where the amount of anti-dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or subsection (2) of this section exceeds the amount of duty determined under section 14 (4) of this Act, the amount of the excess shall be remitted by the Collector if so required by the Minister.

“(6) Where the amount of anti-dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or subsection (2) of this section is less than the amount of duty determined under section 14 (4) of this Act, the amount of the difference shall not be collected on those importations subject to the provisional direction.”

18. Retrospective measures—(1) Section 17 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Except as provided in this section, the day on and from which anti-dumping duty or countervailing duty is payable on goods to which section 14 of this Act applies shall be,—

“(a) Where a provisional direction has been given under section 16 of this Act in relation to those goods, the day after the date of the decision of the Minister to give notice of that direction; and

“(b) In any other case, the day after the date that the Minister makes a final determination under section 13 (1) of this Act.”

(2) Section 17 (3) of the principal Act (as substituted by section 13 of the Dumping and Countervailing Duties Amendment Act 1990) is hereby amended—

(a) By omitting the word “levy”, in both places where it appears, and substituting the word “impose”:

(b) By omitting from paragraph (b) the words “General Agreement on Tariffs and Trade and the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade”, and substituting the words “WTO Agreement”:

(c) By omitting the number “90”, and substituting the number “60”.

(3) Section 17 (4) of the principal Act (as so substituted) is hereby amended—

- (a) By omitting the words “levies provisional duties”, and substituting the words “gives a provisional direction”;
- (b) By omitting the words “levied in accordance with section 14 of this Act”, and substituting the word “imposed”;
- (c) By omitting the number “90”, and substituting the number “60”.

19. Third country anti-dumping and countervailing duties—The principal Act is hereby amended by repealing section 18 (as amended by section 14 of the Dumping and Countervailing Duties Amendment Act 1990), and substituting the following section:

“18. Where the Government of a third country advises the Secretary that—

“(a) Goods imported or intended to be imported into New Zealand—

“(i) Were produced or manufactured in another country; and

“(ii) Have been dumped or subsidised; and

“(b) By reason of the dumping or subsidisation,—

“(i) Material injury to a domestic industry of a third country (being a country other than New Zealand and other than the country in which the goods were produced or manufactured) has been or is being caused or is threatened; or

“(ii) The establishment of a domestic industry of such a country has been or is being materially retarded,—

the provisions of this Act (including, without limitation, sections 10, 11, 14, 15, 16, and 17 of this Act) shall, with all necessary modifications, apply with respect to the effect of those goods on that third country’s domestic industry in the same manner as they apply with respect to the effect of those goods on a New Zealand industry.”

20. Savings—Section 19 (4) of the principal Act (as added by section 15 of the Dumping and Countervailing Duties Amendment Act 1990) is hereby amended—

- (a) By omitting the expression “section 14 (3A)”, and substituting the expression “section 14 (6)”; and

(b) By omitting the expression “section 14 (2)”, and substituting the expression “section 14 (4)”.

21. Transitional provisions—Every investigation, review, or reassessment initiated under the principal Act before the commencement of this Act shall be continued, completed, and determined in accordance with the provisions of the principal Act as in force immediately before the commencement of this Act (as if those provisions had already been amended by section 18 (1) of this Act).

22. Consequential repeals—Sections 2, 3, 7, 8, 9, 10, 12, 13, and 14 of the Dumping and Countervailing Duties Amendment Act 1990 are hereby consequentially repealed.

This Act is administered in the Ministry of Commerce.
